Reargument

A Guide to Resources in the Law Library

- "'[T]he purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts.' (Internal quotation marks omitted.) *Jaser v. Jaser*, 37 Conn. App. 194, 202, 655 A.2d 790 (1995). It also may be used 'to address alleged inconsistencies in the trial court's memorandum of decision as well as claims of law that the [movant] claimed were not addressed by the court.' *K. A. Thompson Electric Co. v. Wesco, Inc.*, 24 Conn. App. 758, 760, 591 A.2d 822 (1991). '[A] motion to reargue [however] is not to be used as an opportunity to have a second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument.' (Internal quotation marks omitted.) *Northwestern Mutual Life Ins. Co. v. Greathouse*, supra, Superior Court, Docket No. 164835." Opoku v. Grant, 63 Conn. App. 686, 692-693, 778 A.2d 981 (2001).
- "'While such a motion should not be readily granted nor without strong reasons, it ought to be when there appears cause for which the court acting reasonable would feel bound in duty so to do. *McCulloch v. Pittsburgh Plate Glass Co*., 107 Conn. 164, 167, 140 Atl. 114; *Wildman v. Wildman*, 72 Conn. 262, 270, 44 Atl. 224.'" Ideal Financing Association v. LaBonte, 120 Conn. 190, 195, 180 A. 300 (1935).
- "It would seem, therefore, that the Appellate Division is not precluded from reexamining its own decisions, within a reasonable time after their rendition, if it appear that otherwise injustice may result because of oversight in a material issue of fact or law." Lapuk v. Blount, 2 Conn. Cir. Ct. 271, 283, 198 A2d 233 (1963).
- "[J]udicial efficiency dictates that the party should not be allowed except in rare and exceptional cases to reargue factual and legal issues which were considered and ruled upon." Timber Trail Associates v. Town of Sherman, No. 307212 (Conn. Super. Ct., Danbury, December 28, 1992), 8 Conn. L. Rptr. 147, 1992 WL 393183 (Conn. Super. 1992).
- **Modification vs. Reargument:** "While a modification hearing entails the presentation of evidence of a substantial change in circumstances, a reconsideration hearing involves consideration of the trial evidence in light of outside factors such as new law, a miscalculation or a misapplication of the law." Jaser v. Jaser, 37 Conn. App. 194, 203, 655 A.2d 790 (1995).

Contents of this Chapter

Figures in this Chapter

Tables in this Chapter

Section 1

Motion to Reargue (Final Judgments)

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the motion to reargue final judgments under CONN. PRACTICE BOOK § 11-11(2004 ed.).

SEE ALSO: § 2. Motion to reargue (non final judgments)

DEFINITION :

- **Final judgments**: "Any motions which would, pursuant to Section 63-1, delay the commencement of the appeal period, and any motions which, pursuant to Section 63-1, would toll the appeal period and cause it to begin again, shall be filed simultaneously insofar as such filing is possible, and shall be considered by the judge who rendered the underlying judgment or decision." CONN. PRACTICE BOOK § 11-11(2004 ed.).
- **Motion**: "The party filing any such motion shall set forth the judgment or decision which is the subject of the motion, the name of the judge who rendered it, the specific grounds upon which the party relies, and shall indicate on the bottom of the first page of the motion that such motion is a Section 11-11 motion." Ibid.
- **Application**: "The foregoing applies to motions to reargue decisions that are final judgments for purposes of appeal, but shall not apply to motions under Sections 16-35, 16-36 and 11-12." Ibid.
- Formerly known in P.B. 1978-1997 as § 204A

COURT RULES:

- CONN. PRACTICE BOOK (2004 ed.)
  - § 11-11. Motions which delay the commencement of the appeal period or cause the appeal period to start again
  - § 63-1. Time to appeal

OFFICIAL COMMENTARY ON COURT RULES:

- "[This rule] is proposed to take care of the situation in which a motion to open, or a similar motion that would delay the commencement of the appeal period, is filed, is placed on the short calendar, and is repeatedly marked 'off,' thereby extending the appeal period for weeks or months. It is contemplated that the clerk will forward the motion directly to the judge who rendered the decision, by-passing the short calendar procedure.

  In that certain motions which would fall with the purview of this rule such as motions to set aside a verdict under section 320 [now 16-35], have specific procedures currently attendant to them which may be inconsistent with this proposed rule, those motions are excepted from the operation of this rule." 56 CONN. LAW J. no. 45, p. 26c (May 9, 1995).
- "This proposed revision is suggested in part in light of Section 4009 [currently § 63-1], which provides that is a motion that might render the

judgment ineffective is filed within the appeal period, the appeal period is tolled and a new appeal period commences when the motion is ruled upon. The reference to simultaneous filing is to prevent parties from filing one motion after another and thereby delaying the appeal. If the motions were ruled upon simultaneously, delay in the appeal would be reduced." 57 CONN. LAW J. no. 45, p. 8E (May 7, 1996).

RECORDS & BRIEFS:

- CONN. SUPREME COURT RECORDS & BRIEFS, Young v. Young (Term of April 1999), Motion to reargue.

CASES:

- Young v. Young, 249 Conn. 482, 493, 733 A.2d 835 (1999). "Therefore, we agree with the defendants that, despite the interest in providing expedient summary process proceedings, there is nothing in the statutory scheme governing summary process actions that authoritatively precludes this court from deciding that a motion to reargue tolls the appeal period until a decision on that motion has been rendered."
- K. A. Thompson Electric Co. v. Wesco, Inc., 24 Conn. App. 758, 760-761, 591 A.2d 822 (1991). "The plaintiff's motion to reargue sought to address alleged inconsistencies in the trial court's memorandum of decision as well as claims of law that the plaintiff claimed were not addressed by the court. We note that it is not relevant, for purposes of extending the appeal period under 4009, whether the claim raised by the motion to reargue had merit in the eyes of the trial court because that motion, if granted, would have required that the trial court render a new judgment, taking additional claims of law into account. See *Whitney Frocks, Inc. v. Jaffe*, 138 Conn. 428, 429 n. 1, 85 A.2d 242 (1951); *Crozier v. Zaboori*, 14 Conn. App. 457, 461, 541 A.2d 531 (1988).

  Because the plaintiff's motion to reargue was timely filed within the original appeal period and the appeal was filed within twenty days of the denial of that motion, we conclude that the plaintiff's appeal was timely filed."

TEXTS & TREATISES:

- JEANINE M. DUMONT, PLEADINGS AND PRETRIAL PRACTICE: A DESKBOOK FOR CONNECTICUT LITIGATORS (1998 ed.).
  - § XIV. Motions to set aside or open, reargue, correct, etc.
    - 6. Motions to reargue
      - a. When reargument is proper
      - b. When reargument is improper
      - c. Presenting new evidence
      - d. Oral argument
- 3A JOEL M. KAYE ET AL., CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
  - Authors' Comments following Form S-174
- 1 RALPH P. DUPONT, DUPONT ON CONNECTICUT CIVIL PROCEDURE (2003 ed.).
  - § 11-11.1. Motion after verdict, distinguished

COMPILED BY:

Lawrence Cheeseman, Connecticut Judicial Branch, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Figure 1 Sample § 11-11 motion from *Connecticut Records & Briefs*

DOCKET NO: 34276	SUPERIOR COURT
FIRST NAMED PLAINTIFF	HOUSING SESSION
V.	AT BRIDGEPORT
FIRST NAMED DEFENDANT	APRIL 20, 1998

MOTION TO REARGUE

Pursuant to Connecticut Practice Book § 11-11, the defendants, _____ and _____ , respectfully move this Court for an order permitting reargument on the decision rendered by the Court, (____, J.), in the above-captioned case on April 17, 1998, wherein the Court granted a judgment of eviction in favor of the plaintiff, _____, on the second count of plaintiff's complaint, and granted judgment in favor of plaintiff and against the defendants on the defendants' principal defense and counterclaim. The specific ground upon which this motion is predicated is that the Court's decision of April 17, 1998 appears to be in direct contravention of a very recent decision issued by the Connecticut Appellate Court, and appearing in the March 31, 1998 Connecticut Law Journal, entitled Kallas v. Harnen, 48 Conn.App. 253 (March 31, 1998).

In support of this motion the defense more specifically represents as follows:

THIS MOTION IS FILED PURSUANT TO P.B. § 11-11

1. This was essentially an eviction action in which the plaintiff, _____, sought possession of certain residential premises located at _____in Fairfield, Connecticut and occupied by her son and daughter-in-law, the defendants, _____.

2. The defendants defended the action by asserting that plaintiff was not, in fact, the legal owner of the premises because the property had been transferred by plaintiff to her son, ____, by way of quitclaim deed in October of 1994. The plaintiff, in response to defendants' claims, never denied that she had in fact executed the quitclaim deed and delivered it to the defendants' attorney, _____. Rather, it was plaintiff's position at all times that the delivery was only "conditional" in nature and that _____ had acted as an "escrow agent" holding the deed in escrow until _____made a $12,000.00 gift tax payment to Attorney _____. Plaintiff's position, therefore, was that, no payment of the gift tax had ever been made by her son under the terms of _____ escrow agreement, and, therefore, the property transfer never occurred.

3. After trial, the court denied the defendants' counterclaim in this case, and granted the plaintiff's request for judgment of eviction. The Court issued a bench-decision wherein the Court found:

(a) That, while the quitclaim deed for _____ had in fact been executed by plaintiff in October of 1994 in favor of her son, there had been no actual "delivery" of that deed to _____ because the entire property transfer had been "conditioned" upon _____ paying to Attorney _____ the sum of $12,000, which represented the gift tax which _____ would be required to pay as a result of the property transfer;

(b) That, while Attorney _____ was, in fact, only representing _____ in the "quitclaim" transaction, by accepting the deed from _____ with actual "delivery" conditioned upon _____' receipt of the $12,000 gift tax from ____, Attorney _____ was acting as an "escrow agent" for the benefit of *both* _____*and* _____; and

(c) That _____ had failed to sustain his burden of proving that he had met Attorney ____' escrow condition, i.e., that _____ had paid the $12,000 gift tax to Attorney _____ or to _____ .

4. In Kallas v. Harnen, 48 Conn.App. 253 (March 31, 1998). the Appellate Court had occasion" to closely examine the legal relationships and obligations existing between parties to a real estate transaction when, as in the present case, a particular attorney who, during the course of that real estate transaction, claimed that he had acted simultaneously as both the

attorney for one of the two parties to the transaction, and as an "escrow agent" for the benefit of *both* of the parties.

5. Particularly noteworthy in Kallas was certain language contained in a written escrow agreement which had been drafted by the attorney and executed by both parties to the property transaction in which it was expressly agreed by both parties and the attorney that the attorney's role in accepting the escrowed property would be as "as an escrow agent for the benefit of both the plaintiff and the defendant." Kallas, 48 Conn. App. at 258.

6. When the lawyer/escrow agent in Kallas subsequently absconded with the escrow money, the buyer, who had delivered the money to the lawyer pursuant to the escrow agreement, sued the seller on the ground that, because the attorney was the seller's in the transaction, the attorney was in fact the seller's agent, and the seller was therefore equally as liable as the attorney. The seller defended the buyer's charge by claiming that, even though the lawyer had represented only the seller in the deal, under the terms of the separate escrow agreement, the attorney, as "escrow agent", had acted on behalf of *both* parties. The seller then argued that:

> a loss occasioned by the wrong of an escrow holder must, as between the parties to the escrow transaction, be borne by the one who owned the property or money at the time of the loss; i.e., if the escrow agent embezzles money before the time when

> the vendor is entitled to it, the loss falls on the vendee; if the escrow agent embezzles the money after the vendor is entitled to it, the loss falls on the vendor.

Kallas, 48 Conn.App. at 253.

7. In rejecting the foregoing argument of the seller, the Appellate Court held:

> As a matter of law, because [the lawyer] was the defendant's attorney and agent, no escrow was established....
>
> In Connecticut, where, pursuant to an agreement, money [or other property] is left in the hands of the attorney or agent of one of the parties, the money [or other property] is *not delivered in escrow.*

Kallas, 48 Conn.App. at 258 (emphasis added)(citations omitted). Again, the Appellate Court reached this conclusion *despite* the existence in writing of an executed agreement between the parties in which the lawyer and the parties all expressly agreed together that the lawyer would act as an "escrow agent". In this respect, therefore, if one accepts as true Attorney ____' testimony in his deposition that he was, in fact, an "escrow agent", Kallas is exactly on all fours with the instant case.

8. This Court's decision in the instant case rested upon three legs:

(a) That Attorney _____, _____'s lawyer, was at all relevant times an "escrow agent" who accepted conditional delivery of a quitclaim deed and thus acted on behalf of *both* Douglas and Rosemary Young;

(b) That Attorney ____' receipt of the executed deed (which, quite

significantly, expressly recited that it was for "no consideration") did not, as a matter of law, constitute an actual "delivery" because the deed had been provided to _____ conditioned upon _____'s payment of the $12,000 gift tax; and

(c) That _____ failed to establish that he ever paid that gift tax.

9. In light of the Appellate Court's decision in Kallas, it is now clear that, as a matter of law, Attorney _____ could not have occupied the legal status of "escrow agent" in this transaction due to his legal relationship with _____ in the transaction. Therefore, under the rationale of Kallas, Attorney _____' receipt of the quitclaim deed from _____ in October of 1994, as a matter of law, constituted a legally binding "delivery" of that instrument to _____, and he alone, as between _____ and his mother, is the sole legal owner of the property.

10. Moreover, if a legally binding delivery of that deed occurred in October of 1994, any *subsequent* beliefs or intentions of _____, or his wife, or his lawyer, Attorney _____, expressed to anyone in the years after 1994, about the nature of _____'s interest in the property, are entirely irrelevant and immaterial. A person need not *know* or believe that he is the legal owner of property in order to *be* the legal owner. Particularly when, as here, the question of ownership becomes solely a legal determination. In light of the holding in Kallas, _____'s only remedy in this case, it appears, would be an action

for breach of contract against her son to recover the $12,000 which she claims she never received.

11. Because it appears that the Appellate Court's very recent decision in Kallas changes the entire complexion of this Court's decision in this case, and wholly supports the trial position of the defense that Attorney _____ acted solely for the benefit of his client, _____ , in accepting "delivery" of the deed, and was not, in fact, an "escrow agent", reargument is appropriate pursuant to Connecticut Practice Book § 11-11, and the defendants respectfully request that the Court grant reargument, reverse its bench decision, and enter judgment in favor of the defendants on their defense and counterclaim.

THE DEFENDANTS,

By _____

Name
Address
Phone number
Juris Number

Their Attorney

Section 2

Motion to Reargue (Non-Final Judgments)

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the motion to reargue non-final judgments under CONN. PRACTICE BOOK § 11-12(2004 ed.).

SEE ALSO: § 1. Motion to reargue (final judgments)

DEFINITION :

- "A party who wishes to reargue a decision or order rendered by the court shall, within twenty days from the issuance of notice of the rendition of the decision or order, file a motion to reargue setting forth the decision or order which is the subject of the motion, the name of the judge who rendered it, and the specific grounds for reargument upon which the party relies." CONN. PRACTICE BOOK § 11-12(a) (2004 ed.).
- "The judge who rendered the decision or order may, upon motion of a party and a showing of good cause, extend the time for filing a motion to reargue. Such motion for extension must be filed before the expiration of the twenty day time period in subsection (a)." CONN. PRACTICE BOOK § 11-12(b) (2004 ed.).
  - "The motion to reargue shall be considered by the judge who rendered the decision or order. Such judge shall decide, without a hearing, whether the motion to reargue should be granted. If the judge grants the motion, the judge shall schedule the matter for hearing on the relief requested." CONN. PRACTICE BOOK § 11-12(c) (2004 ed.).
- "This section shall not apply to motions to reargue decisions which are final judgments for purposes of appeal. Such motions shall be filed pursuant to Section 11-11." CONN. PRACTICE BOOK § 11-12(d) (2004 ed.).
- § 11-12 was formerly known in P.B. 1978-1997 as § 204B

COURT RULES:

- CONN. PRACTICE BOOK (2004 ed.)
  § 11-12. Motion to reargue

FORMS:

- 3A JOEL M. KAYE ET AL., CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
  Form S-174. Motion to reargue

CASES:

- Gallo v. Parke, CV 03 0826885 S (Nov. 17, 2003), 35 CLR 697. "As noted in the defendants' objections, the motion seeks to reargue, pursuant to Practice Book § 11-12, a decision which is a final judgment. Subsection (d) of Practice Book § 11-12 provides, "This section shall not apply to motions to reargue decisions which are final judgments for purposes of appeal. Such motions shall be filed pursuant

to Section 11-11." The court's memorandum of decision was a final judgment, in favor of the defendants. Accordingly, the motion to reargue is incorrectly brought under Practice Book § 11-12."

TEXTS & TREATISES:

- JEANINE M. DUMONT, PLEADINGS AND PRETRIAL PRACTICE: A DESKBOOK FOR CONNECTICUT LITIGATORS (1998 ed.).
  - § XIV. Motions to set aside or open, reargue, correct, etc.
    - 6. Motions to reargue
      - a. When reargument is proper
      - b. When reargument is improper
      - c. Presenting new evidence
      - d. Oral argument
- 1 RALPH P. DUPONT, DUPONT ON CONNECTICUT CIVIL PROCEDURE (2003 ed.).
  - § 11-12.1. Time within which to file motion to reargue
  - § 11-12.2. Reargue, Motion for; No hearing
  - § 11-12.3. Reargument, motion for; Procedure on
- 3A JOEL M. KAYE ET AL., CONNECTICUT PRACTICE SERIES, PRACTICE BOOK ANNOTATED (1996).
  - Authors' Comments following Form S-174.

COMPILED BY:

Lawrence Cheeseman, Connecticut Judicial Branch, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

Table 1 Unreported Connecticut Cases on Reargument

Unreported Connecticut Cases on Reargument	
Dimitriou v. State Dept. of Public Safety, No. CV890357000(Conn. Super. Ct. Hartford, August 20, 1993), 9 Conn. L. Rptr. 631, 1993 WL 328547, 1993 Conn. Super. LEXIS 2096.	"The undersigned believes that a motion to reargue should be granted if the parties bring to the court's attention some important precedent that is contrary to the ruling of the court or if the court's ruling is based on erroneous facts."
Sampiere v. Zaretsky, No. CV86 02 03 89S (Conn. Super. Ct. Milford, Dec. 3, 1992), 1992 WL 369531, 1992 Conn. Super. LEXIS 369531.	"The Court grants reargument on the Motion to File Late Disclosure of Expert Witness because it regards that newly disclosed fact as important."
Timber Trail Associates v. Town of Sherman, No. 307212 (Conn. Super. Ct., Danbury, December 28, 1992), 8 Conn. L. Rptr. 147, 1992 WL 393183 (Conn. Super. 1992).	"[J]udicial efficiency dictates that the party should not be allowed except in rare and exceptional cases to reargue factual and legal issues which were considered and ruled upon."
Heyman Associates v. Insurance Co. of Pennsylvania, No. CV91-0397087.(Conn. Super. Ct., Hartford, May 17, 1993), 9 Conn. L. Rptr. 121 (Conn.Super. 1993), 1993 WL 182402 (Conn.Super. 1993).	"The plaintiff discusses the filing and approval requirements of General Statutes § 38a-676 for the first time in its motion to reargue, dated March 12, 1993. (The plaintiff's motion for summary judgment was filed on October 1, 1991, and the court rendered its decision on the parties' motions on February 25, 1993.) Section 38a-676 is not a newly enacted statute, and therefore, the plaintiff could have raised the filing and approval issues on its original motion for summary judgment. Thus, by failing to raise the legal issues of filing and approval (pursuant to General Statutes § 38a-676) which existed at the time that the plaintiff filed its motion for summary judgment, the plaintiff has waived these issues for consideration by the court." [**Continued**]

Forsell v. Conservation Com'n of Town of Redding, No. 31 67 98.(Conn. Super. Ct., Danbury, June 15, 1995), 14 Conn. L. Rptr. 391, 1995 WL 374016 (Conn.Super. 1995).	"On March 31, 1995, this court filed its memorandum of decision. On April 20, 1995, the defendant, Conservation Commission of the Town of Redding, filed its notice of appeal to the Appellate Court. On the same date, the plaintiff filed a motion for reargument asking the court to clarify its remand order. The plaintiff's subject motion was filed pursuant to Practice Book, Sec. 204a which is entitled 'Motions Which Delay the Commencement of the Appeal Period.' Since the appeal had already been filed, the appropriate motion to correct alleged improprieties in the memorandum of decision would be a motion to articulate, pursuant to Practice Book, Sec. 4051. This motion is filed with the Appellate Court and procedurally would be in accord with the view expressed in *Leverty & Hurley Co. v. Commissioner of Transportation*, 192 Conn. 377, 379, 471 A.2d 958 (1984) where the court indicated that a section 4051 motion is the appropriate vehicle to obtain a clarification of the trial court's ruling."
Kimchuk Inc. v. Dataswitch Corp., No. 30 42 96 (Conn. Super. Ct. Danbury, Dec. 7, 1995), 1995 WL 774466, 1995 Conn. Super. LEXIS 3379.	"Further, Kimchuk's motion to reargue is also denied as it was untimely filed."
Crosby v. Bridgeport Radiology, No. CV93 306998 (Conn. Super. Ct. Fairfield J.D., Feb. 21, 1997), 1997 WL 112753, 1997 Conn. Super. LEXIS 465.	"A motion to reargue is governed by Practice Book § 204B [now §11-12]. Practice Book § 204B requires that such a motion be filed 'within twenty days from the issuance of notice of the rendition of the decision or order' sought to be reargued. The present motion is filed far beyond that time period. The motion to reargue is denied."
Judelson v. Christopher O'Connor, Inc., No. CV 950371181 (Conn. Super. Ct., New Haven, Jun. 7, 1995), 14 Conn. L. Rptr. 321, 322, 1995 WL 360752.	"The court has not adverted to the evidentiary material attached to the defendants' motion to reargue because it was not presented at the evidentiary hearing and no motion was filed to open the evidence in order to present it."
Matos v. B-Right Trucking Co., No. CV94 31 00 65 S (Conn. Super. Ct., Bridgeport, Jan. 4, 1996), 15 Conn. L. Rptr. 650, 1996 WL 38247.	"The motion to reargue is denied. Under Practice Book § 211(A) [currently § 11-18(a)] , as amended effective October 1, 1995, oral argument on such motions is within the discretion of the court. When the defendant filed its Notice of Intent to Argue, it did not explain why oral argument was necessary nor did it explain why the defendant should prevail. Section 211 was amended to facilitate the resolution of short calendar motions. Clearly, the two motions decided by the court were ones which could be decided without oral argument. Whenever a litigant files a motion of the class for which oral argument does not exist as of right, the opposing party must do something more than merely file a notice of intent to argue. Otherwise, the amendment to § 211 will have had no effect whatsoever."